IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 110 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PREMKUMAR R DANGER

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 110 of 2002

MR VB GHARANIYA for Petitioner No. 1

PUBLIC PROSECUTOR for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 17/09/2002

ORAL ORDER

1. As per present roster the Office first place this Revision Application before C.K.Buch, J. on 8.4.2002 for admission. When this matter was placed before C.K.Buch, J., learned Counsel Shri Gharaniya appearing for the

present petitioner - complainant, submitted that the averments made in the Application refers and also interprets the effect of the order passed by this Court (Coram : B.J.Shethna, J.) in the month of June, 2001. According to Shri Gharaniya the order passed by this Court on 25.6.2001 had not given rise even to file an application for discharge.

2. In view of the aforesaid submission made by Shri Gharaniya before C.K.Buch, J., His Lordship, without going into the merits of the mater and in reference to the averments made in the Application, directed the Registry to place this matter before the appropriate Court. Accordingly, this matter is placed before this Court.

3. Learned Counsel Shri Gharaniya for the petitioner - original complainant took me through my order dated 25.6.2001 passed in Criminal Miscellaneous Application No.1062 of 2001 and submitted that when the respondent accused filed Application before this Court the parties i.e. accused and the complainant were negotiating in the mater to settle it. Instead of that without making any further efforts of settling the matter the accused straightway filed an application before the learned Special Judge to discharge him for the offences u/s.506, 114 I.P.Code and Section 3(1)(x) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act"). He, therefore, submitted that such an application was not maintainable before the learned Judge. Therefore, on this ground alone the impugned order dated 29.11.2001 passed by the learned Addl. Sessions Judge, Kutch at Gandhidham, in Special Case No.14 of 2001 discharging the accused without framing the charge against him for the aforesaid offences be quashed and set aside.

4. It is true that in my order dated 25.6.2001 passed in Criminal Miscellaneous Application No.1062 of 2001, I had observed that the parties were negotiating to settle the matter which they can continue to do so before the trial Court also. However, this was never the condition precedent to file an application for discharge before the trial Court. If the order dated 25.6.2001 (Annexure:A-1) is read as a whole then it is more than clear that the accused can always apply for discharge before the trial Court itself. It is a different matter that without proceeding further with the negotiation with the complainant, the accused straightway approached the learned Addl. Sessions Judge for discharging him for the aforesaid offences. If the accused applied for discharge

on the grounds mentioned in his application then in my considered opinion there would not have been any difficulty on the part of the learned Addl. Sessions Judge to consider that application and decide it in accordance with law.

5. Shri Gharaniya, learned Counsel for the petitioner then addressed the Court on merits of the case. According to his submission, private chamber of the officer is also a part of public place, and if the accused had abused the complainant by his caste in the chamber then also obviously the offence u/s.3(1)(x) of the Atrocities Act is prima facie said to have been committed by the accused. He, therefore, submitted that the learned Addl. Sessions Judge was wholly in error in discharging the accused by accepting the aforesaid submissions raised on behalf of the accused that private chamber of the officer cannot be said to be a public place u/s.3(1)(x) of the Atrocities Act.

6. Having carefully gone through the impugned order of discharge dated 29.11.2001 passed by the learned Addl. Sessions Judge, it appears that the learned Judge has not only discharged the accused on the ground that the alleged incident in question had taken place in the private chamber of the officer, but he also found that the averments made in the complaint and the statement of the witnesses show that the said complaint was filed by the complainant with a view to bring pressure on the officer as their demands were not fulfilled.

7. The incident in question alleged to have taken place way back in 1994. When the learned Addl. Sessions Judge discharged the accused on 29.11.2001, more than 7 years' period had passed. Even after passing of the aforesaid order of discharge by the learned Addl. Sessions Judge almost the period of one year has passed. The present Revision Application is filed by the petitioner, who is the original complainant, u/ss. 397, 401 Cr.P.C. and also u/s.482 Cr.P.C. Thus, by way of this Revision Application the petitioner complainant wanted this Court to exercise its revisional jurisdiction as well as inherent jurisdiction u/s.482 Cr.P.C., which is not permissible. When this petition is labelled as Revision Petition then this Court can only exercise its revisional jurisdiction. The powers of this Court in a revision are very narrow and limited as held by the Hon'ble Supreme Court in catena of decisions.

8. Having carefully gone through the impugned order passed by the learned Addl. Sessions Judge, discharging the accused on the grounds stated therein, I am of the

considered opinion that it cannot be said that the learned Addl. Sessions Judge has committed any error while discharging the accused. In such type of cases when already more than period of 8 years has passed after the commission of alleged offences then I am of the considered opinion that such a case should not be reopened by this Court after so much time. It seems that with a view to satisfy the personal vendetta and with a view to bring undue pressure on the officer this complaint was filed against the accused. Initially, there were 2 accused, the main accused Lalit Bhatt has already died, therefore, the present respondent - accused Cyril C. George is the only accused. In such type of cases even if there was some substance in the Revision Application then also on the peculiar facts of this case narrated hereinabove, this Court would not have interfered with the impugned order.

9. In view of the above discussion, this Revision Application fails and is hereby summarily dismissed.

sd/-

Date : September 17, 2002 (B.J.Shethna, J.)

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